

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 377 OF 2015.

Vishvanath s/o. Narayan Nhavi (Kshirsagar),
Age: 48 Years, Occu. Agriculture,
R/o. Khirdi, Tq. Chopda, District: Jalgaon. Appellant

Versus

The State of Maharashtra
[Copy to be served on Government Pleader,
High Court of Bombay, At Aurangabad] Respondent

Advocate for Appellant : Mr. A. A. Nimbalkar
APP for Respondent : Mr. S.D. Ghayal

**CORAM : SMT. VIBHA KANKANWADI
& RAJESH S. PATIL, JJ.**

**RESERVED ON : 27.07.2022
PRONOUNCED ON : 14.10.2022**

JUDGMENT [PER : RAJESH S. PATIL, J.]

1. The appellant i.e. the original accused takes exception to the Judgment and Order dated 17.03.2015 passed by the Hon'ble Additional Sessions Judge, Jalgaon, in Sessions Case No. 152/2012, thereby convicting the appellant / accused of the offences punishable U/sec. 302 and 376(1) of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay a fine of Rs.3000/- and in default of the payment of the fine, to undergo simple imprisonment for three months in respect of the former and to suffer imprisonment for ten years and to pay fine of Rs.3000/- and in default of payment of fine to undergo simple imprisonment for three months in respect of the latter.

2. The prosecution's case in short is that the Informant used to reside along with his mother (victim), who was aged about 70 years in a room in the field of Ravindrasing Bhika Pardeshi, r/o Savkheda Kd. Prior to 6 days, the owner has employed Vishvanath Narayan Nhavi (Kshirsagar)- the accused, for lifting the poles of banana. He used to reside and dine with the informant and his mother (victim) in the said room.

3 On 17-5-2012, at about 7.30 p.m., the owner of the field Ravindrasing Bhika Pardeshi was drawing milk of the cattle. Informant, his mother (victim) and accused Vishvanath were all present in front of the room. Vishvanath accompanied his employer Ravindrasing to the market, as he wanted to purchase some articles. The deceased (victim) and accused Vishvanath only remained at home. After 1½ hours, when the informant was returning from market towards the field, Ravindrasing, his employer met him on the way. He informed him about phone call of Raju Pardeshi, the adjoining field owner, that his mother (victim) was not present in the field. Hence they both proceeded towards the field on the motorcycle. Accused Vishvanath was sitting there and his clothes were smeared with blood. They searched for his mother in the room. On the floor, blood stains were present but the dead body was not there. On searching, dead body of victim was found in the adjoining field of Ramdas Hatkar.

4. Informant further alleged that on the previous day as well as on that day, he has denied accused to reside and take meals with them. Being annoyed by the same, under influence of liquor accused

might have committed rape on his mother and due to resistance by her, committed her murder.

4.1] The oral report of Informant was recorded by A.P.I., Mr. O.G. Kokate, of Pimpalgaon Hareshwar Police Station. He registered the offence vide crime No.32 of 2012 under Section 302, 376(1) and 201 of I.P.C.

4.2] Thereafter, Investigating Officer, Mr. O.G. Kokate, visited the 'scene of offence' situated in the field of Ramdas Laxman Hatkar, where he conducted Inquest on 18.5.2012 and accordingly Inquest Panchanama was prepared and the dead body was sent for postmortem. After postmortem was carried out, the clothes on the person of the deceased came to be seized by drawing Panchanama. The accused came to be arrested and the clothes on the person of the accused were also seized by drawing panchanama. Informant was sent for medical examination and later on, his Medical Certificate has been collected. Statement of witnesses were recorded and after the conclusion of investigation, charge sheet was filed.

5. After committal of the case, the learned Additional Sessions Judge framed charge at Exh.4 for the offence punishable under Section 302, 376 and 201 of IPC. The contents of the charge sheet were read over and explained to the accused, which he denied and claimed to be tried. In view of his plea, trial was conducted. The prosecution had examined in all 7 witnesses to bring home the guilt of the accused. After considering the evidence on record, the learned Additional Sessions Judge, held the offence under Section 302 and 376 proved by the

prosecution beyond reasonable doubt and sentenced him as aforesaid. The trial court however held that offence under Section 201 is not made out. Hence, this appeal.

6. Heard Mr. Jaiswal, for the appellant.

7. It has been vehemently submitted on behalf of the appellant that, there is not a single eye witness to the alleged offence. The contradictions in the depositions of P.W. 3 Raju i.e. neighbour and P.W. 4 Ravindra i.e. the employer of informant at material points, are required to be taken into consideration. The medical evidence does not support the case of the prosecution. The testimony of the informant i.e. P.W.-7 if reckoned in its entirety would reveal falsity. There was no motive at all of the appellant to commit the alleged offences. The Appellant was made to consume liquor heavily by the P.W.-7 i.e. informant. This act is very probable given the fact that, the P.W.-7 informant had in his report lodged with the police station concerned has alleged that, the accused under the influence of liquor might have committed rape upon his mother (victim) and murdered her on account of resistance by her. Also the fact that deposition of the owner Ravindra that he had given Rs.1000/- to P.W.-7 informant and Rs.50/- to the accused, lends support to this assertion of the accused. Therefore, if considered logically and in apt appreciation of the panorama of events that have taken place the case of the accused is craplvery well covered by the general exception under Section 85 of the Indian Penal Code. The appellant/accused was not seen taking the deceased (victim) to some place. Secondly as per the prosecution's case the deceased (victim) and accused were sitting at the house of deceased (victim) and her son informant – P.W.-7, in the field of the P.W.-4

employer. Thus, the deceased (victim) was not in the custody of the accused. Hence, the last seen theory as sought to be projected by the prosecution should not have been relied upon and trusted. In support of his submissions the learned counsel for appellant relied upon judgment of Division Bench of this Court in the matter of ***“Ranjana @ Changuna Prakash Sonawane and others Vs. State of Maharashtra” 2018(5) Mh.L.J. 870.***

8. Per contra, learned APP strongly opposed the appeal and submitted that the conclusion drawn by the learned Additional District Judge is perfectly legal and correct. The testimony of PW-8 Dr. Ajay Sonawane, Medical Officer, would show that in column No.17, the death was due to cardio respiratory arrest with head injury with sub-dural haematoma. The conclusion that has been drawn by the learned Additional Sessions Judge, is perfectly correct and the case would fall under section 302 of IPC. Similarly, the prosecution has also proved on the basis of medical evidence that the victim was subjected to sexual offence and as such, offence under Section 376 is also attracted.

9. We have considered the rival submissions. We have also perused the entire evidence and the judgment of the trial court. In order to bring home the guilt of the accused, the prosecution has examined in all 9 witnesses. Amongst them, key witnesses are PW-3 Raju Gokulsing Pardeshi, adjoining field owner, PW-2 Ravindra Bhika Pardeshi, the field owner and employer of accused and PW-7 son of the deceased and PW-8 Dr. Ajay Bajirao Sonawane. On examination of evidence, the trial court has arrived at a conclusion that the death was homicidal. For that purpose, prosecution examined PW-1 Jaisingh Mahadu Pardeshi – Panch

witness to inquest panchanama. He supported the prosecution case. Dead body was identified by PW-7. It was sent for autopsy at Civil Hospital, Jalgaon. According to Medical Officer, PW-8 Dr. Ajay Sonawane, there was bleeding from nose and mouth of deceased. Both eyes were swollen. There was blakish colouration and presence of haematoma on both the eye balls. There was bleeding injury from both the ears. Presence of CLW and fracture of nasal bone was also found. Medical officer further found scratching injury of red colour. On internal examination, he found presence of scalp haematoma on head and undisplaced fracture of left temporal parietal bone of skull. He also found external injury on genital. On the basis of external and internal injuries, he opined that injures were ante-mortem in nature and that cause of death was due to head injury with sub-dural haematoma. Defence has not produced anything on record to show that injuries sustained by the deceased may be accidental injuries. In view of spot panchanama, inquest panchanama as well as post mortem and cause of death given by the Medical Officer, the trial court has held that prosecution has proved that the death of deceased (victim) is homicidal.

10. From the testimony of PW-4 Ravindra, who is the employer of son of the deceased as well as the accused, so also, the testimony of PW-7 - the son of the deceased, it can be seen that PW-4 Ravindra had gone to the field around 6.00 p.m. on 17.05.2012 to draw milk and at that time PW-7, the deceased as well as the accused were present in the house. Thus, it can be seen that there is a corroboration to this fact and thereafter, after doing the work when PW-4 Ravindra started to go to the village, PW-7 accompanied him on motorcycle. He was dropped by PW-4 near Shriram Milk Center. That means, when they left the deceased and

the accused were the only persons present in the house. Thereafter, at about 9.30 p.m., PW-4 Ravindra had received phone call from PW-3 Raju asking regarding the whereabouts of PW-7 and his mother and then he had also seen the accused having blood stains on his clothes, the household articles were in scattered condition as well as blood in the house. Thereafter, when PW-4 Ravindra started to go towards the field, i.e. towards the house of deceased, on the way he met PW-7. That means, the incident could have happened between 8.00 p.m. to 9.00 p.m. Therefore, on the point of proximity also, it can be seen that the chain of circumstances is complete and, therefore, the point of last seen together was also vital point, which has been duly considered by the learned trial Judge.

11. As regards murder and rape, the trial court has held that the prosecution has successfully proved that the chain of circumstantial evidence is complete and that, accused Vishwanath was last seen together with deceased (victim) in the field of Ravindra. The conduct of neighbours after hearing shouts of victim coming at the scene of occurrence appears to be natural. Even at that point, accused was present at the spot with his clothes smeared with blood. He had kept his bag ready but due to arrival of PW-3 Raju, he could not run away from the spot. PW-7 also corroborated the version of neighbours. The testimonies of witnesses are free from contradictions, omissions and exaggeration. All these witnesses have no enmity of whatsoever nature with accused to falsely implicate him. Neither PW-3 Raju nor PW-4 Ravindra have any motive to commit the said offence nor there is any iota of evidence brought on record to doubt that the offence of rape and murder may have been committed by them. Their testimonies have

remained un-shattered and unchallenged. All these facts demonstrate that there is an element of truth in the oral testimonies of these witnesses.

12. Informant has disclosed about the motive of the accused behind the crime. The scene of offence in the room and at the field shows evidence of assault and resistance by the victim. Within 15 to 20 minutes after shots given by victim, accused seems to have silenced here by committing her murder by assaulting on her nose and head by stone Article 12. He then might have shifted the dead body of deceased to the sweet lime field. He returned back and came near the room with his baggage. This fact has been fortified by the Medical opinion of Medical Officer PW-8 as well as C.A. reports according to which human blood was found on the stone and which was recovered at the instance of accused under Section 27 of the Evidence Act. There is specific opinion of the doctor that the injuries sustained by the deceased on her head and nose were ante-mortem in nature. The injuries sustained on her head was sufficient in ordinary course to cause death. The cause of death of deceased has been given by doctor as cardio respiratory arrest with head injury with sub-dural haematoma. The Medical Officer has given specific opinion at Exh.38 that rape was committed on deceased as there were injuries on the genitals. Thus, the prosecution has successfully established the chain of circumstances and the circumstances taken cumulatively form a complete chain and hence we are of the opinion that within all human probabilities, the crime was committed by the accused and accused only and nobody else.

13. So far as the submission of learned counsel for the appellant

that there was not a single eye witness to the incident needs no consideration in view of the evidence that has been brought by the prosecution on record. The defence, that the accused was under the influence of liquor is also required to be negatived, inasmuch as, the motive has been clearly established by the prosecution and there is nothing on record to suggest that the accused did the heinous act of murder under the influence of liquor. The chain of circumstances is complete.

14. We have considered the evidence as well as the judgment of the learned trial court. We find that the trial court, on proper appreciation of evidence has rightly held that the prosecution has established that it was the accused alone who has committed the murder of deceased (victim). The conclusions drawn by the trial court are perfectly legal and proper. No case is made out to interfere in the well reasoned judgment delivered by the trial court. The appeal being sans merit, deserves to be dismissed.

15. Criminal Appeal is dismissed.

[RAJESH S. PATIL]
JUDGE

grt/-

[SMT. VIBHA KANKANWADI]
JUDGE